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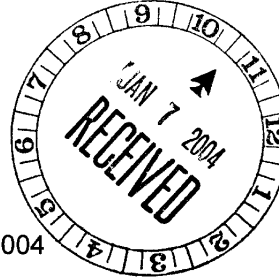
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January 7, 2004

VIA HAND DELIVERY

Vernon Williams, Secretary
Office the Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

JAN -7 2004

Part of
Public Record

**Re: FD 34429; New York City Economic Development Corp - -
Petition for Declaratory Order**

Dear Secretary Williams:

Pursuant to the provisions of 49 C.F.R. §1117.1, the New Jersey Department of Environmental Protection respectfully submits this Petition for Leave to File a Reply together with its Reply of The New York City Economic Development Corporation to Requests for Extension of Time.

In accordance with the Board's rules, we have enclosed the original and 10 copies of each of these pleadings and request that the extra copies be date-stamped and returned so that our files may properly evidence this filing.

If you have any questions concerning this, please do not hesitate to contact us.

Very truly yours,

Edward D. Greenberg

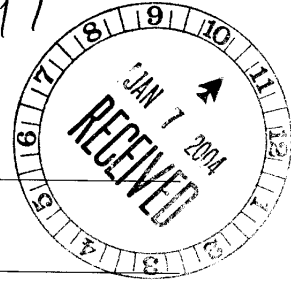
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Encl

cc: David M. Konschnik, Esquire (via hand delivery)
Charles A. Spitulnik, Esquire (via facsimile)
Louis Oliva, Esquire (via facsimile)
Paul M. Donovan, Esquire (via facsimile)

209797

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34429



PETITION OF
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
FOR LEAVE TO FILE REPLY

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Office of Proceedings

JAN - 7 2004

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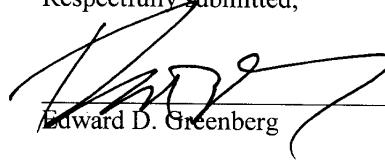
The New Jersey Department of Environmental Protection ("NJDEP"), pursuant to the provisions of 49 C.F.R. §1117.1, respectfully submits this Petition for Leave to File a Reply to the Reply of The New York City Economic Development Corporation ("NYCEDC") to Requests for Extension of Time that was filed January 6, 2004.

NJDEP recognizes that replies to replies are not ordinarily permitted. However, NJDEP believes it necessary to respond to NYCEDC's reply in order to provide an explanation as to why NYCEDC's opposition to NJDEP's request for extension of time is unjustified.

As set forth more fully in the attached Reply, the full three-week extension sought by NJDEP is both necessary and appropriate; moreover, any hardship on NYCEDC that allegedly results from the extension is attributable to NYCEDC's delay in filing its petition for declaratory order with the Board.

Accordingly, NJDEP requests leave to file the attached Reply pertaining to its request for an extension of time.

Respectfully submitted,


Edward D. Greenberg

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Special Counsel for the State of New Jersey,
Department of Environmental Protection

Dated: January 7, 2004

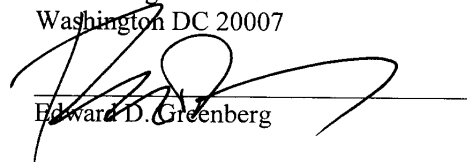
Certificate of Service

I hereby certify that a copy of the foregoing State of New Jersey, Department of Environmental Protection's Petition for Leave to File Reply was served this 7th day of January 2004 via facsimile to the following:

Charles A. Spitulnik
Alex Menendez
McLEOD, WATKINSON & MILLER
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Washington DC 20001

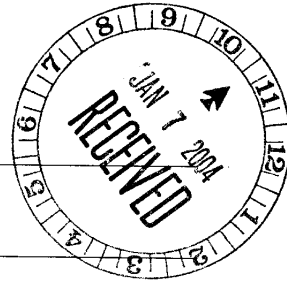
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Edward D. Greenberg

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34429



**REPLY OF
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
REPLY TO NEW YORK CITY ECONOMIC DEVELOPMENT
CORPORATION TO REQUEST FOR EXTENSION OF TIME**

The New Jersey Department of Environmental Protection ("NJDEP"), submits the following reply to the Reply of the New York City Economic Development Corporation, acting of behalf of the City of New York, New York ("NYCEDC") to Request for Extension of Time.

I. BACKGROUND

On October 29, 2003, NYCEDC filed a petition with the Board seeking the institution of a Declaratory Order Proceeding. Subsequently, on December 10, 2003, the Board published a notice concerning the nature and scope of the issues raised in NYCEDC's petition and set a procedural schedule by which each person were to file written comments. Under the schedule set forth in the Board's 2003 Notice, comments are due by January 9, 2004, which replies thereafter due after January 29, 2004.

Although NJDEP had not yet determined whether it would file comments in this proceeding, it nonetheless was constrained to seek a three-week extension of time in which to file any comments, and filed its request on January 2, 2004. In support of that request, NJDEP pointed out that the scope of NYCEDC's petition seemed very broad and might well effect the nature of state and environmental regulations well beyond this particular project. NJDEP also pointed out that the recently concluded holiday season had made it impossible for NJDEP officials to meet with the either the representatives of NYCEDC or the New York State Department of Environmental Conservation ("NYSDEC").

On January 5, 2004, NYSDEC similarly sought a three-week extension of time to submit the required comments, noting its agreement with the "broad and possibly precedential implications the requested ruling might have beyond this particular project." NYSDEC also asserted that the construction project would affect tidal streams that are tributaries to the Arthur Kill, which is "a navigable water over which both the State of New York and New Jersey have partial jurisdiction on both the state and federal law." (NYSDEC letter of January 5, 2004, at 2.) Moreover, NYSDEC pointed out that NYCEDC submitted, on December 16, 2003, a lengthy document entitled *Proposed Staten Island Railroad Reactivation Environmental Assessment*, together with a request that NYSDEC officials continue to process an environmental permitting application that had been submitted earlier.

II. REPLY

The NJDEP is still attempting to meet with both officials of NYCEDC and NYSDEC in order to better understand the nature of the project, the extent to which NJDEP's interests might be affected by the contemplated project and whether it is possible for NYCEDC to narrow the scope of its petition in a way that would not interfere with legitimate and necessary state and environmental oversight of construction projects that are contemplated in sensitive environmental areas. NJDEP views the meeting process as essential in reaching a decision on whether it is necessary for it to participate and its inability to have accomplished this is attributable to the recently concluded holiday season, rather than by any intention to delay the resolution of the issues in this proceeding. Moreover, NJDEP needs time to better understand the facts involved and only yesterday learned about this new NYCEDC submission that apparently provides a more comprehensive explanation of the nature of the planned project.

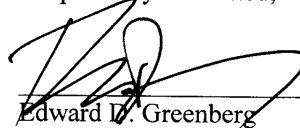
NJDEP is mindful of NYCEDC's request for expedited treatment and does not wish to delay this proceeding. Nonetheless, a three-week extension of time to file comments does not seem inappropriate in light of the fact that NYCEDC waited until October 29, 2003 to file its petition, even though it was aware that it needed to begin the construction contracting process the following month in order to meet a planned construction project date of March 2004. By waiting so long to file its petition, NYCEDC has put all parties, including the Board, up against an extremely short deadline that leaves insufficient time for the parties and the Agency to brief and

consider a number of complex and significant issues. Moreover, if the Board ultimately rules against NYCEDC on the merits of the declaratory order petition and find that 49 U.S.C. §10501(b) does not preempt NYSDEC's oversight, the planned construction schedule might well be delayed by virtue of any decision NYSDEC might make on the permitting application pending before that agency.

In reciting this history, NJDEP does not mean to criticize NYCEDC's position in this matter. Rather, the point is that while NJDEP is sympathetic to the asserted need to expedite this proceeding, NYCEDC's objection to a three-week extension and alternative suggestion of a ten-day extension is both inappropriate and inadequate under these circumstances. To a large extent, NYCEDC is responsible for the time constraints here and the issues raised are too important and complex to be dealt with in the summary fashion upon which it now insists.

Accordingly, NJDEP requests that the Board grant its initial request for a three-week extension of the comment period for all parties.

Respectfully submitted,



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Special Counsel for the State of New Jersey,
Department of Environmental Protection

Dated: January 7, 2004


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